Supreme Court, U.S.
FILED
NOV 2 1984
ALEXANDER L. STEVAS
CLERK

84-766
No.

In the Supreme Court of the United States

October Term, 1984

JOHN H. JAMASON and JAMES GABBARD,
Appellants,

vs.

STATE OF FLORIDA,
Appellee.

ON APPEAL FROM THE SUPREME COURT OF FLORIDA

JURISDICTIONAL STATEMENT

DAVID ROTH
CONE WAGNER NUGENT JOHNSON
HAZOURI & ROTH
P. O. Box 3466
West Palm Beach, Florida 33401
(305) 655-8100

and

KLEIN & BERANEK, P.A.
LARRY A. KLEIN
(Counsel of Record)
Suite 503 - Flagler Center
501 South Flagler Drive
West Palm Beach, Florida 33401
(305) 659-5455

Attorneys for Appellants

E. L. MENDENHALL, INC., 926 Cherry Street, Kansas City, Mo. 64106, (816) 421-3030

QUESTION PRESENTED BY APPEAL

WERE DEFENDANTS DENIED DUE PROCESS WHEN HELD IN CRIMINAL CONTEMPT FOR FAILURE TO OBEY A TELEPHONE CALL FROM A JUDGE, IN WHICH THE JUDGE STATED SHE WAS ISSUING AN ORAL WRIT OF HABEAS CORPUS, WHERE THERE WAS NO SERVICE OF PROCESS.

TABLE OF CONTENTS

QUESTION PRESENTED BY APPEAL I
OPINIONS OR DECISIONS BELOW 1
GROUNDS ON WHICH JURISDICTION IS INVOKED 1
CONSTITUTIONAL PROVISIONS AND ORDINANCES INVOLVED 2
STATEMENT OF THE CASE 3
REASONS FOR PLENARY CONSIDERATION 5
CONCLUSION 9
CERTIFICATE OF SERVICE 10
APPENDIX A1

TABLE OF AUTHORITIES

Cases

Bussey v. Legislative Auditing Committee of Legislature, 298 So.2d 219 (Fla. 1st DCA 1974) 5
Davidson v. New Orleans, 96 U.S. 97, 24 L.Ed. 616 6
Jamason v. State, 447 So.2d 892 (Fla. 4th DCA 1983) 1
Jett v. Castaneda, 578 F.2d 842 (9th Cir. 1978) 7, 8
Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 70 S.Ct. 652, 676 (1950) 6

Constitution

United States Constitution, Fourteenth Amendment 3

Statutes

28 U.S.C. Section 1257 2
Section 79.01, Florida Statutes 2, 5
Section 79.03, Florida Statutes 3, 5

Other

16A Am.Jur.2d, Constitutional Law § 829 (1979) 6
62 Am.Jur.2d, Process § 43 (1972) 7

No.

In the Supreme Court of the United States

October Term, 1984

JOHN H. JAMASON and JAMES GABBARD,
Appellants,

vs.

STATE OF FLORIDA,
Appellee.

ON APPEAL FROM THE SUPREME COURT OF FLORIDA

JURISDICTIONAL STATEMENT

OPINIONS OR DECISIONS BELOW

The opinion of the Fourth District Court of Appeal, State of Florida, which is reported as *Jamason v. State*, 447 So.2d 892 (Fla. 4th DCA 1983), and the opinion of the Florida Supreme Court, not yet reported, are contained in the appendix.

GROUNDS ON WHICH JURISDICTION IS INVOKED

After receiving a telephone call from a lawyer, a judge telephoned City of West Palm Beach police chief Jamason, and one of his officers, Lt. Gabbard, stating she was issuing an oral writ of habeas corpus, and or-

dering them to bring a suspect, whom they were interrogating, before the court immediately. The police chief and lieutenant responded that they would obey a written order, but not an oral order. The court adjudicated them guilty of criminal intent and fined them each $500. They appealed to the Fourth District Court of Appeal, State of Florida, which affirmed in a written opinion, but certified the question to the Florida Supreme Court as being one of great public importance. The Florida Supreme Court affirmed on August 30, 1984, in a written opinion. Appellants filed their notice of appeal to this Court, in the Florida Supreme Court on October 25, 1984.

The Florida courts construed Section 79.03, Florida Statutes, which provides that a writ of habeas corpus shall be served by the Sheriff on the person having custody of the prisoner, as being sufficiently complied with by the telephone call from the judge. This decision, that service by telephone is sufficient, resulted in a denial of due process under the Fourteenth Amendment.

The statute conferring jurisdiction on this Court to review by appeal is 28 U.S.C. Section 1257.

CONSTITUTIONAL PROVISIONS AND ORDINANCES INVOLVED

Section 79.01, Florida Statutes, provides:

> When any person detained in custody, whether charged with a criminal offense or not, applies to the supreme court or any justice thereof, or to any district court of appeal or any judge thereof or to any circuit judge for a writ of habeas corpus and shows by affidavit or evidence probable cause to believe that he is detained without lawful authority,

the court, justice or judge to whom such application is made shall grant the writ forthwith, against the person in whose custody the applicant is detained and returnable immediately before any of the courts, justices or judges as the writ directs.

Section 79.03, Florida Statutes, provides:

When issued, the writ shall be served by the sheriff of the county in which the petitioner is alleged to be detained on the officer or other person against whom it is issued, or in his absence from the place where the prisoner is confined, on the person having the immediate custody of the prisoner. When the Sheriff of the county is the person holding the party detained, a delivery to or receipt of the writ by him is sufficient service.

The Federal constitutional provision involved is the due process clause of the Fourteenth Amendment.

STATEMENT OF THE CASE

The following facts are taken from the opinion of the Fourth District Court of Appeal:

. . . On January 18, 1982, at approximately 9:30 a.m., Judge Rosemary Barkett received a telephone call from Steven Gomberg, an attorney in private practice. Attorney Gomberg explained to Judge Barkett that he had been retained by the wife of one John Melody, who was being detained at the West Palm Beach Police Department. Attorney Gomberg stated that appellant Gabbard (a lieutenant with the West Palm Beach Police Department) had refused his request to see John Melody.

Mr. Melody was, in fact, in custody as a suspect in a rape case. He had been advised of his constitutional rights and had made no request to consult with counsel or to contact anyone.

On the basis of the call from attorney Gomberg, Judge Barkett telephoned appellant Gabbard and stated that she was "issuing an oral writ of habeas corpus to bring John Wayne Melody before me immediately." Appellant Gabbard declined to comply and the judge asked to speak to appellant Jamason (Chief of the West Palm Beach Police Department) who also refused to comply with the oral order. Appellants did not doubt that the person issuing the oral order was Judge Barkett.

At about 12:15 p.m. a formal writ of habeas corpus was served on Major Mann of the West Palm Beach Police Department; however, Melody was no longer in the custody of that Department. He had been transferred to the Palm Beach County Jail for booking. Appellants allege that if Melody had been in their custody at the time the written writ was served, they would have complied with it.

Appellants took the position that they did not have to comply with an oral writ of habeas corpus over the telephone. They advised the court they would comply with a written writ. The Fourth District noted on page 7 of its opinion that the appellants thought they were doing what was necessary to preserve this issue for appellate review because the power of the court to issue oral writs had previously been in dispute. The Fourth District stated, however, that they were technically in contempt and affirmed the criminal conviction of contempt.

Lack of service of process as required by the Florida Statutes, and due process, was argued in the Florida courts by reliance on the following language from *Bussey v. Legislative Auditing Committee of Legislature,* 298 So.2d 219 (Fla. 1st DCA 1974), wherein the court stated on page 221:

> . . . Where the defendant does not enter a voluntary general appearance or otherwise waive service of process, the issuance and service of process is *indispensable* to the jurisdiction of the Court, even though the Court may have jurisdiction of the subject matter. . . .
>
> * * *
>
> If we were to give this language the interpretation urged by appellee, it would violate the Federal and Florida Constitutional guarantees of due process of law, which concept includes *notice* and opportunity to be heard and to defend before a competent tribunal vested with jurisdiction of the subject matter of the cause. . . . (Emphasis in original)

REASONS FOR PLENARY CONSIDERATION

Section 79.03, Florida Statutes, requires that a writ of habeas corpus ". . . shall be served by the sheriff of the county in which the petitioner is alleged to be detained on the officer or other person against whom it is issued. . . ." Both the Fourth District Court of Appeal and the Supreme Court of Florida have held in the present case that service of a writ of habeas corpus over the telephone is sufficient to comply with the statute. The oral writ itself emanated from the Court solely as the result of a telephone call from a lawyer. This did not comply with the requirements of Section 79.01, Florida Statutes, which requires the applicant

for a writ of habeas corpus to show probable cause that he is unlawfully restrained by "affidavit or evidence".

While this Court does not generally take an interest in how state courts construe their statutes, this Court does review by appeal State court decisions which construe state statutes so as to deprive a person of a Federal constitutional right. *Davidson v. New Orleans,* 96 U.S. 97, 24 L.Ed. 616.

Neither the Fourth District Court of Appeal nor the Florida Supreme Court cited any precedent for the issuance of an oral writ of habeas corpus. There is no precedent in Florida or any other jurisdiction which has approved an oral writ of habeas corpus. Indeed the service of process over the telephone so far transcends due process that it has rarely been in issue.

In *Mullane v. Central Hanover Bank & Trust Co.,* 339 U.S. 306, 70 S.Ct. 652, 676 (1950), this Court stated:

> Many controversies have raged about the cryptic and abstract words of the Due Process Clause but there can be no doubt that at a minimum they require that deprivation of life, liberty or property by adjudication be preceded by notice and opportunity for hearing appropriate to the nature of the case.

In 16A Am.Jur.2d, Constitutional Law § 829 (1979), it is stated:

> [W]here a clear statutory requirement is omitted from the initial process which is the means of impairing notice of adverse proceedings, the rule of liberal construction must yield to the guaranty of due process of law.

None of the statutory requirements of habeas corpus in Florida were complied with in the present case.

In 62 Am.Jur.2d, Process § 43 (1972), it is stated:

> The reading of a summons to the defendant over the telephone is not a sufficient service thereof under a statute or rule of practice requiring a summons to be served by the proper officer, by reading the same to the party or parties named therein as defendant, particularly when at the time such provision governing the method of serving process by reading it to the defendant was enacted the telephone was not in existence as a general means of communication. Moreover, it is argued that to permit an officer directed to serve a summons in person, to serve it by reading the writ over the telephone would open the door for fraud, confusion, and misunderstanding, particularly in view of the fact that the officer in the performance of such duty is frequently called upon to serve process upon strangers or at least upon persons with whose voices he is unfamiliar.
>
> The American Law Institute says that in the absence of statute, service by telephone upon a person within the state is insufficient to give the court jurisdiction over him.

Jett v. Castaneda, 578 F.2d 842 (9th Cir. 1978), involved a warden's appeal from a contempt judgment. Castaneda, a Terminal Island inmate, became a suspect in a fatal stabbing which occurred in the prison yard. He refused to answer questions during the investigation until he spoke with his attorney. The investigators notified the attorney who moved for and was granted an appointment as Castaneda's counsel. The attorney, because of

possible self-defense and insanity defenses, also wanted a list of and access to witnesses and an opportunity for a psychiatrist to examine Castaneda. He presented motions to the court which, without notice to the warden or the prosecutor, entered them. A subsequent series of events culminated in the court's finding the warden in contempt. The Ninth Circuit reversed, holding the district court had no jurisdiction to enter discovery orders in a criminal investigation when no case is pending. Recognizing the district court's concern for the prisoner's rights, the Ninth Circuit stated on page 845 of its opinion:

> . . . the district court, despite its commendable concern for the rights of a person whose condition made him vulnerable to possible overreaching by the government, had no jurisdiction to enter its discovery orders. The commission of a judge is not a general assignment to go about doing good. There is work enough for courts to do, and time enough for a judge to act when a case is properly brought before the court. In the matter presently before us, there was no case, no controversy, and no jurisdiction to make an order on discovery. Accordingly, there was no jurisdiction to cite anyone for contempt.

Likewise, in the present case the trial court had no jurisdiction to issue an oral writ of habeas corpus. No action had been instituted and there was nothing pending before the court. The first contact the court had was a telephone call from a lawyer. Based on that telephone conversation alone the court telephoned the defendants indicating it was issuing an oral writ of habeas corpus for them to bring the suspect, who had waived his right to counsel, immediately before the court. Florida requires service of process by the sheriff of a writ of habeas corpus.

This contemplates that the writ of habeas corpus shall be written. Those two requirements would give the officer on whom the writ is served notice and opportunity for hearing. The telephonic process used in the present case gave defendants neither.

CONCLUSION

Defendants' rights under the Fourteenth Amendment have been violated because they have been denied due process of law. It is respectfully submitted that this appeal should receive plenary consideration.

Respectfully submitted,

DAVID ROTH
CONE WAGNER NUGENT JOHNSON
HAZOURI & ROTH
P. O. Box 3466
West Palm Beach, Florida 33401
(305) 655-8100

and

KLEIN & BERANEK, P.A.
LARRY A. KLEIN
(Counsel of Record)
Suite 503 - Flagler Center
501 South Flagler Drive
West Palm Beach, Florida 33401
(305) 659-5455
Attorneys for Appellants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Jurisdictional Statement was served by United States mail this 1st day of November, 1984 on:

Mark C. Menser
Assistant Attorney General
125 N. Ridgewood Avenue
Fourth Floor
Daytona Beach, Florida 32014

David Bludworth
State Attorney
Palm Beach County Courthouse
300 N. Dixie
West Palm Beach, Florida 33401

LARRY A. KLEIN
Counsel of Record

APPENDIX

SUPREME COURT OF FLORIDA

No. 63,571

JOHN H. JAMASON, et al., Petitioners,

vs.

STATE OF FLORIDA, Respondent.

[August 30, 1984]

OVERTON, J.

This cause is before us on petition to review a decision of the Fourth District Court of Appeal reported as *Jamason v. State*, 447 So. 2d 892 (Fla. 4th DCA 1983), in which the district court certified the following question as being of great public importance:

> Whether the willful refusal to obey a telephonic order (in the nature of a writ of habeas corpus) issued by a court of general jurisdiction and based upon an oral application therefor by an attorney for the individual said to be illegally restrained, may constitute criminal contempt.

Id. at 896. We have jurisdiction, article V, section 3(b)(4), Florida Constitution, and we approve the district court decision and answer the certified question in the affirmative.

The relevant facts of this cause are as follows. At approximately 9:30 a.m. on January 18, 1982, Circuit Court Judge Rosemary Barkett received a telephone call from an attorney who was allegedly retained to represent a man in the custody of the West Palm Beach Police Department. The attorney stated that he had been denied access to his client. Judge Barkett then telephoned the petitioners, officers with the West Palm Beach Police Department, and stated that she was "issuing an oral writ of habeas corpus to bring [the prisoner] before me immediately." 447 So. 2d at 893. There was no dispute concerning the identity of Judge Barkett but the officers refused to comply with her oral order. By the time a formal writ of habeas corpus had been issued, the prisoner had been transferred to the Palm Beach County Jail. Petitioners were subsequently adjudged guilty of criminal contempt for the willful refusal to obey the court's telephonic order and were fined $500 each.

On appeal, the district court of appeal affirmed the trial court. The court noted that "only if an order is entered in a matter concerning which the court has no jurisdiction may such an order be safely ignored. The corollary of that rule is that whether an order be totally erroneous or irregular or even unconstitutional, its violation may constitute a criminal contempt." 447 So. 2d at 893. Finding that this case involved on oral application for a writ of habeas corpus the district court held that the circuit judge had subject matter jurisdiction to issue the oral order. The court concluded by finding that, while the oral order may have been voidable, it was not void and the willful refusal to comply constituted criminal contempt.

We fully agree with the reasoning of the district court. There is no question that the prisoner was in the custody of the petitioners who knew that the circuit judge had jurisdiction to issue writs of habeas corpus and jurisdiction, as a committing magistrate, over all individuals in custody in Palm Beach County for state, county, or municipal offenses. At most, the order issued by Judge Barkett was voidable. Oral orders by trial courts while not preferred, are necessary at times. Law enforcement also finds it necessary at times to request that oral orders be entered for jail release of confidential informants, jail transfers, and inmate illness. Such oral orders should, however, be reduced to writing as soon as practicable. Petitioners, as law enforcement officers, must obey the orders of lawful authority the same as everyone else, even though they may disagree with the order. They had available the proper means to challenge the order by appearing as directed, with the prisoner in custody, and challenging the sufficiency and validity of both the habeas corpus petition and the process employed before proceeding to the consideration of the petition on its merits.

We find that the petitioners were properly adjudicated in criminal contempt and we approve in full the district court decision.

It is so ordered.

BOYD, C.J., ALDERMAN, McDONALD, EHRLICH and SHAW, JJ., Concur

ADKINS, J., Dissents

IN THE DISTRICT COURT OF APPEAL
OF THE STATE OF FLORIDA
FOURTH DISTRICT
JANUARY TERM 1983

Case No. 82-565.

JOHN H. JAMASON and JAMES GABBARD,
Appellants,

v.

STATE OF FLORIDA,
Appellee.

OPINION

(Filed March 23, 1983)

Appeal from the Circuit Court for Palm Beach County; Rosemary Barkett, Judge.

David Roth of Cone, Wagner, Nugent, Johnson, Hazouri & Roth, and Larry Klein, West Palm Beach, for appellants.

Jim Smith, Attorney General, Tallahassee, and Mark C. Menser, Assistant Attorney General, Daytona Beach, for appellee.

Leon St. John, Florida Criminal Defense Attorneys' Association, West Palm Beach, as Amicus Curiae.

HERSEY, J.

Appellants, law enforcement officers, were adjudged guilty of criminal contempt and were each fined $500.00. The contempt consisted of refusal to comply with the telephonic order of a circuit court judge to produce and bring before her an individual in the custody of appellants. Custody terminated before a formal writ of habeas corpus could be served. After notice and a hearing the judge entered the order under review here.

These skeletal facts need fleshing out in order to place the important issues in proper perspective. In brief: On January 18, 1982, at approximately 9:30 a.m., Judge Rosemary Barkett received a telephone call from Steven Gomberg, an attorney in private practice. Attorney Gomberg explained to Judge Barkett that he had been retained by the wife of one John Melody, who was being detained at the West Palm Beach Police Department. Attorney Gomberg stated that appellant Gabbard (a lieutenant with the West Palm Beach Police Department) had refused his request to see John Melody.

Mr. Melody was, in fact, in custody as a suspect in a rape case. He had been advised of his constitutional rights and had made no request to consult with counsel or to contact anyone.

On the basis of the call from attorney Gomberg, Judge Barkett telephoned appellant Gabbard and stated that she was "issuing an oral writ of habeas corpus to bring John Wayne Melody before me immediately." Appellant Gabbard declined to comply and the judge asked to speak to appellant Jamason (Chief of the West Palm Beach Police Department) who also refused to comply with the oral order. Appellants did not doubt that the person issuing the oral order was Judge Barkett.

At about 12:15 p.m. a formal writ of habeas corpus was served on Major Mann of the West Palm Beach Police Department; however, Melody was no longer in the custody of that Department. He had been transferred to the Palm Beach County Jail for booking. Appellants allege that if Melody had been in their custody at the time the written writ was served, they would have complied with it.

In fact, appellants (through Major Mann of the Police Department) informed personnel at the county jail of the issuance of the writ and sent a copy of it to the jail. At some point in time after the oral order was issued, a written petition for a writ of habeas corpus was filed.

The question to be answered by these appellate proceedings is whether the willful refusal to obey a telephonic order (in the nature of a writ of habeas corpus) issued by a court of general jurisdiction and based upon an oral application therefor by an attorney for the individual said to be illegally restrained, may constitute criminal contempt.

The first important issue to be determined is whether, and if so under what circumstances, an oral order of a court of general jurisdiction may be disregarded with impunity. The clear answer is that only if an order is entered in a matter concerning which the court has no jurisdiction may such an order be safely ignored. The corollary of that rule is that whether an order be totally erroneous or irregular or even unconstitutional, its violation may constitute a criminal contempt. We explained this rule at length in *Sandstrom v. State,* 309 So.2d 17, 20 (Fla. 4th DCA 1975), *quoting* Anno.: Contempt—Disobeying Invalid Decree, 12 A.L.R.2d 1059, 1107.

> Where the court has jurisdiction over the subject matter and the parties and has the authority or power to

> render the particular order or decree, the fact that such order or decree, violation or disobedience of which is made the basis of the contempt charge, is erroneous or irregular or improvidently rendered, does not justify the defendant in failing to abide by its terms, and his conduct in failing to do so may be punished as for contempt despite the error or irregularity. It is almost unanimously agreed that if the defendant desires to attack the order or decree as erroneous, he must do so, not by disregarding or violating it and then setting the error up as a defense to a charge of contempt, but by attacking the order on direct appeal or by motion to set it aside. He cannot attack it collaterally upon an appeal from the judgment of contempt or upon an application for habeas corpus to be released from imprisonment for contempt. He must obey the order so long as it is in effect and until it is dissolved by the court issuing it, or reversed on appeal by the appellate court.

The rule is not the progeny of the arrogance of the judiciary but a safeguard of the rights of citizens to have their lives, their property and their freedom protected from attack from any source by an independent and impartial court guided by a system of enshrined laws. Its rationale was more fully explored by the Fifth Circuit Court of Appeals in *United States v. Dickinson,* 465 F.2d 496, 510 (5th Cir. 1972):

> The criminal contempt exception requiring compliance with court orders, while invalid nonjudicial directives may be disregarded, is not the product of self-protection or arrogance of Judges. Rather it is born of an experience proved recognition that this rule is essential for the system to work. Judges, after all, are charged with the final responsibility to adjudicate legal dis-

> putes. It is the judiciary which is vested with the duty and the power to interpret and apply statutory and constitutional law. Determinations take the form of orders. The problem is unique to the judiciary because of its particular role. . . . the deliberate refusal to obey an order of the court without testing its validity through established processes requires further action by the judiciary, and therefore directly affects the judiciary's ability to discharge its duties and responsibilities. Therefore, 'while it is sparingly to be used, yet the power of courts to punish for contempts is a necessary and integral part of the independence of the judiciary, and is absolutely essential to the performance of the duties imposed on them by law. Without it they are mere boards of arbitration whose judgments and decrees would be only advisory.'

There are two significant jurisdictional events involved in the present case, both of which raise issues which appear to be matters of first impression in this jurisdiction.

The first is whether jurisdiction of the subject matter in a habeas corpus proceeding is properly invoked by an oral application. Chapter 79, Florida Statutes (1981), studied in a vacuum, would dictate a negative reply to this inquiry. We may not stop there, however. The great writ has its origins in antiquity and its parameters have been shaped by suffering and deprivation. It is more than a privilege with which free men are endowed by constitutional mandate; it is a writ of ancient right.

> The great writ, known commonly by the name of habeas corpus, was a high prerogative writ known to the common law, the object of which was the liberation of those who were imprisoned without sufficient cause. See *Ex-parte* Watkins, 3 Pet. (U.S.) 193, 7 L.Ed. 650.

It is a writ of inquiry upon matters of which the State itself is concerned in aid of right and liberty. State v. Michel, 105 La. 741, text 747, 30 South. Rep. 122, 54 L.R.A. 927; *Ex parte* Coupland, 26 Tex. 386.

The name of the writ is "*habeas corpus ad subjiciendum et recipiendum.*" It is not an action or suit but is a summary remedy open to the person detained. It is civil rather than criminal in nature and is a legal and not equitable remedy. See *Ex-parte* Watkins, *supra*; *Ex-parte* Bollman, 4 Cranch (U.S.) 75, 2 L.Ed. 554.

. . . .

[W]hile the writ had been in use in England from remote antiquity it was often assailed by kings who sought tyrannical power and the benefits of the writ were in a great degree eluded by time-serving judges who assumed a discretionary power in awarding or refusing it and were disposed to support royal and ministerial usurpations. Owing to such abuses the writ became powerless to release persons imprisoned without any cause assigned. In the fight by the people against the abuses of the writ, petitions of rights were submitted to the king and during the reign of Charles I, A. D. 1641, provisions were enacted intended to make the writ effectual. These activities were however vain. At last, in 1679, the Statute 31 Chas. II Chap. 2 was enacted. That Act is known as the Habeas Corpus Act. That Act has been substantially incorporated into the jurisprudence of every State in the Union and the right to it secured by their Constitutions. The Constitution of the United States provides that the privilege of the writ of habeas corpus shall not be suspended except in certain circumstances. Art. I, Sec. 9, par. 2, U. S. Const.

> The application for the writ may be made by an agent or friend, wife, husband, or the person detained himself, or by parent for his child, guardian for his ward, or special bail for his principal. In any event it must be a friendly person in the interest of the person illegally detained.

State ex rel. Deeb v. Fabisinski, 111 Fla. 454, 460-461, 152 So. 207, rehearing denied 156 So. 261 (1933).

It was early established that no formal application was required to invoke the jurisdiction of the courts in habeas corpus proceedings. "No formal application for habeas corpus is required." *Martin v. State,* 123 Fla. 143, 145, 166 So. 467 (1936). "The writ of *habeas corpus* is a writ of right. It is sometimes issued upon very informal application, *Ex Parte* Pells, 28 Fla. 67, 9 South. Rep. 833." *Ex Parte:* Ernest Amos, 93 Fla. 5, 11, 112 So. 289 (1927). The most extreme statement of the rule is represented by the following quotation from Corpus Juris Secundum:

> [t]he writ may be issued by the court of its own motion in a proper case. 39A C.J.S., Habeas Corpus § 167.a (1976).

This quotation taken out of context is inserted here merely for contrast. We are not called upon to decide whether a judge may *sua sponte* issue the writ but whether a telephonic application is a viable alternative to some form of written application, as, for an example of the latter, an informal letter written to a Justice of the Supreme Court. *Sneed v. Mayo,* 66 So.2d 865 (Fla. 1953).

> As a general rule, a habeas corpus proceeding is an independent action, legal and civil in nature, designed to secure prompt determination as to the legality of restraint in some form.

Crane v. Hayes, 253 So.2d 435, 439 (Fla. 1971).

Habeas corpus, then, like the unicorn, is a unique animal. Public policy demands that it be readily, speedily and constantly available. The judiciary has been singularly zealous in responding to that policy. Given the history of the great writ in politics as well as in the judicial arena we are inclined to the view that the oral application involved here was sufficient to invoke the court's jurisdiction. As was said in *Anglin v. Mayo*, 88 So.2d 918, 919-920 (Fla. 1956):

> [H]istorically, habeas corpus is a high prerogative writ. It is as old as the common law itself and is an integral part of our own democratic process. The procedure for the granting of this particular writ is not to be circumscribed by hard and fast rules or technicalities which often accompany our consideration of other processes. If it appears to a court of competent jurisdiction that a man is being illegally restrained of his liberty, it is the responsibility of the court to brush aside formal technicalities and issue such appropriate orders as will do justice. In habeas corpus the niceties of the procedure are not anywhere near as important as the determination of the ultimate question as to the legality of the restraint.

We do no more than expand upon the phrase "If it appears to a court of competent jurisdiction" when we determine that if the court is advised by an oral communication by one having a legitimate interest that an individual may be "illegally restrained of his liberty, it is the responsibility of the court to . . . issue such appropriate orders as will do justice."

We are aware of no policy considerations which would lead to a different result. If we bear in mind that all we are concerned with at this juncture is activating the juris-

diction of the court, any parade of horribles picturing an unbridled judiciary seeking omnipotence must be brushed aside. The court has no more power, nor any less, in an action commenced by the spoken as opposed to the written word. The criteria is availability or access to the courts and no other rule suits it so well.

Such a rule, on the other hand, should give the judiciary food for thought. Problems of identity, credibility, reality of interest and even judicial immunity from personal liability may become issues in or consequent upon habeas corpus proceedings instituted orally. Such questions will demand the exercise of judicial discretion to a high degree.

Having therefore concluded that the court had subject matter jurisdiction so that the order was not void on that account, we next consider the second jurisdictional event: the oral order. Both parties concede the validity of unwritten orders under a multitude of circumstances. We doubt that the present case fits within any of such circumstances. We lean toward the view, without deciding, that service of a formal writ is an absolute requirement to obtain personal jurisdiction over the authority it is claimed illegally restrains the body of the captive individual. We need not decide the issue, however, as it involves jurisdiction over the person, which, if defective, renders the order voidable only, not void. One may not disobey with impunity the order of a court which is merely voidable, as here.

We have come full circle. The court, having subject matter jurisdiction, issued an order (which may be voidable because it was oral) in the nature of a writ of habeas corpus with which appellants chose to refuse to comply. We are somewhat sympathetic to appellants' argument that they were seeking, through what appeared to them to be

the only channel open for that purpose, appellate resolution of an issue which appears to have been a frequently encountered and therefore troublesome one, to wit: oral orders. Technically, however, they committed an act of criminal contempt in the process and we are not prepared to determine that the amounts of the respective fines represent an abuse of discretion.

In affirming on the foregoing basis we specifically do not foreclose the possibility that the amount of the fines may be reduced either by the trial court, sua sponte, or upon appropriate application to the trial court by appellants for post-conviction relief.

Further, because the matter is one of first impression in the State of Florida and may in one of its potentially infinite variations recur with some frequency, we determine the issue to be one of great public importance and certify the following question to the supreme court:

> Whether the willful refusal to obey a telephonic order (in the nature of a writ of habeas corpus) issued by a court of general jurisdiction and based upon an oral application therefor by an attorney for the individual said to be illegally restrained, may constitute criminal contempt.

AFFIRMED; REMANDED; QUESTION CERTIFIED.

ANSTEAD and WALDEN, JJ., concur.